

March 23, 1999

### **Airstrikes Likely This Week**

## **Senate to Vote Today on Preventing Funding of Military Operations for Kosovo**

Pursuant to a cloture petition laid down by the Majority Leader last Friday, the Senate at 2:15 p.m. today will vote on cloture on the Smith (NH) second-degree amendment (No. 124, introduced by the Majority Leader on behalf of Senator Smith) to the Hutchison (TX) amendment (No. 81) to the Emergency Supplemental Appropriations and Rescissions bill (S. 544). The Smith amendment would prohibit the use of funds available to the Department of Defense for military operations by American forces in the Federal Republic of Yugoslavia (Serbia and Montenegro) unless Congress enacts a law containing specific authorization for the conduct of such operations. The prohibition, as laid down by the Majority Leader on Friday, is identical to S. J. Res. 11, introduced by Senator Smith on February 23, 1999. It would not apply to intelligence or intelligence-related activities, surveillance, or logistical support, or to any measure necessary to defend U.S. Armed Forces against immediate threats.

The cloture vote on the Smith amendment will take place as the Clinton Administration appears to be moving toward airstrikes against Serbia. According to the Administration's stated policy, the airstrikes would be meant to force that country to accept to an autonomy agreement (to be enforced by NATO ground troops) for the Serbian province of Kosovo. Kosovo has an ethnic Albanian majority. On March 11, 1999, the House of Representatives approved by a vote of 219-191 (with 173 Republicans voting in the negative) a resolution (H. Con. Res. 42) authorizing the deployment of American ground troops to Kosovo to enforce a peace agreement.

### **Airstrikes to Force Acceptance of NATO Ground Troops**

Once again, the Clinton Administration appears to be on the verge of military intervention on behalf of Kosovo, in the form of airstrikes against Yugoslavia (now comprised of two republics, Serbia and Montenegro), which could begin at any time. The Administration would be taking this action for the express purpose of forcing Belgrade to agree to the introduction of a NATO ground force into Kosovo to enforce a peace agreement granting immediate autonomy (and probably in the future, independence) to Kosovo.

After several weeks of talks in France, the agreement was signed on March 17 by the Kosovo Albanian delegation, including representatives of the Kosovo Liberation Army (KLA), a

group dedicated to achieving Kosovo independence through violent struggle, as well as to achieving "liberation" of neighboring Albanian-inhabited areas of Macedonia, Montenegro, and Greece. Serbia, however, while indicating some willingness to accept the political aspects of the agreement regarding autonomy, has categorically refused to agree to what it regards as a foreign (i.e., NATO) occupation of its sovereign territory. [For an analysis on the Clinton link between airstrikes and a follow-up ground mission, see RPC's "Bombing, or Ground Troops — or Both: Clinton Kosovo Intervention Appears Imminent," 2/22/99. For a full analysis of the course set several months ago by the Administration leading to military action in Kosovo, and of the complex history of the Kosovo problem, see RPC's "Bosnia II: The Clinton Administration Sets Course for NATO Intervention in Kosovo," 8/12/98.] A last-minute mission to Belgrade by the Clinton Administration's Balkan point man Richard Holbrooke has apparently failed in efforts to secure Serb agreement.

According to recent press accounts, airstrikes would be expected to follow a two-phase plan beginning with "demonstration strikes" by air- and sea-launched cruise missiles, followed by a pause to allow the Serbs to reconsider their rejection of the NATO ground force. If the Serbs did not capitulate, a second wave of strikes, lasting several days, would target air defenses, military communications, and other military assets throughout Yugoslavia. This second wave would expose NATO planes to Serbian anti-aircraft defense, believed to be comparable to those of Iraq. On March 18, Air Force Chief of Staff Michael Ryan warned the Senate Armed Services Committee that "there is a distinct possibility we will lose aircraft" ["NATO Airstrike Threat Renewed As Serbs Again Reject Peace Deal," *Wall Street Journal*, 3/19/99]. However, latest reports indicate that NATO may omit any pause in the campaign and conduct a continuous attack, including strikes at tactical targets within Kosovo. Numerous reports indicate Serb preparations for a NATO attack.

This weekend, as a NATO attack looked increasingly likely and European monitors were withdrawn from Kosovo, Serbian forces launched what appear to be a large-scale offensive against the KLA and its supporters. The offensive appears to be concentrated in a triangle of land known as Drenica, to the west of Pristina, the provincial capital of Kosovo; the region is largely in the hands of a KLA faction led by a "Commander Remi," who has denounced the agreement signed in France. Military action in Kosovo had been intensifying as the talks in France have been breaking down over the past few weeks. At the same time, it is expected that Yugoslav president Slobodan Milosevic will use any attack as a pretext for intensified repression against domestic political opponents, independent media, and students, and against American interests in Serbia, such as his recent seizure of the American-owned ICN Pharmaceuticals plant in Belgrade.

## **Contradictory Evidence of a Massacre?**

As with the war in Bosnia-Herzegovina, the Kosovo war has been characterized by conflicting claims of victimization of civilians by the opposing parties. As in Bosnia, the Clinton Administration's Kosovo policy has been faulted for being long on hyperbole and melodramatic depictions of the human suffering of the Kosovo Albanians (amplified by pro-intervention media coverage) and short on specific explanations of U.S. interests and goals, exit strategy, and potential costs. For example, in recent days, the report of killings of 45 ethnic Albanians in the

town of Racak that took place in January has become a major point in the Administration's effort to claim that immediate intervention is imperative:

**"We should remember what happened in the village of Racak back in January — innocent men, women, and children taken from their homes to a gully, forced to kneel in the dirt, sprayed with gunfire — not because of anything they had done, but because of who they were."** [President Bill Clinton, press conference, 2/19/99]

**"An entire village was massacred. The Finnish [forensic investigators] came in and acknowledged that they had people sitting on their knees and put guns at their heads, and blew their brains away. . . Massacring is taking place, genocide is taking place."** [Senator Joseph Biden, *ABC's "This Week,"* 2/21/99]

However, from what can be gleaned from press reports, the Finnish pathologists — who did not investigate the site of the killings — were far less definite about their conclusions about what had happened at Racak than the foregoing characterizations would indicate. The pathologists' full report has not yet been made public. Instead, the Administration has cited in support of its contention that a massacre had taken place a four-page summary (available from RPC) of the report: "We have received a four-page summary of the Finnish forensic team's report on the Racak killings. We've not yet seen the full text or the full autopsy reports on the 40 bodies that the team had access to. But again, we have seen this summary." [James Foley, State Department press briefing, 3/17/99]

However, in a manner suggestive of the Administration's manipulative use of information on domestic issues, the contents of even the summary of the pathologists' findings were apparently pre-leaked to selective media sympathetic to the Clinton policy. For example, on March 17, a *Washington Post* story ("U.S. Says Racak Forensic Report Confirms Massacre") based on advance Administration sources — the Finnish team only announced their findings at a press conference the day the *Post* story appeared — relied heavily on the contention that the Albanians' clothing and the "spray pattern" of the bullets was "consistent with" a massacre of civilians forced to kneel by Serbian forces or who were running away when shot. However, the same facts could be seen as consistent with KLA fighters (some of whom are uniformed and others of whom are not) taking cover in or being chased into the gully where about 22 of the bodies were found.

At their press conference in Kosovo that same day, the chief of the team of Finnish pathologists pointedly did not assert that a massacre had taken place:

"She said it was up to the European Union — which mandated the Finnish team to perform the autopsies — to make any political comment on the Racak killings. Of the 40 corpses autopsied, said her report, 22 were those of men 'found in a gully close to the village of Racak. They were most likely shot where found ... The rest ... were found at or close to the village. The most that can be said is that the victims appear to have died approximately at the same time,' [the pathologist's statement] said. . . . 'No indication of tampering or fabrication of evidence was detected,' it said, adding that a conclusion that

the Racak killing was a massacre 'does not fall within the competence of the EU forensic team.' " ["Finnish Experts Demur on What Happened in Racak Killings," *Agence France Press*, 3/17/99]

In confirming whether the Albanians (of whom 42 of the 45 killed were adult males, not "men, women, and children" or "an entire village") were civilians who were summarily executed or combatants killed in the course of fighting, a key question is whether or not the deceased were tested for residue of having recently fired weapons:

"Finnish pathologists investigating how 45 ethnic Albanian villagers were killed may be unable to determine whether they were massacred or died in battle because of possible evidence-tampering, the team leader said today. The remarks by [chief Finnish investigator] Helena Ranta signal that international officials may never learn the full story of the Racak village killings, which stirred international outrage and renewed calls for military action against Serbia to halt its crackdown in Kosovo. . . . Ranta told reporters her team was aware of reports that some of the bodies tested positive on paraffin tests, indicating they may have fired a weapon. . . . Paraffin tests are widely discounted in U.S. courts because tobacco and fertilizers often give the same results as gunpowder. The victims were mostly farmers in a region where smoking is nearly universal among males." [*Associated Press*, 1/26/99]

The Finnish team did, however, conduct a test for metal fragments, which proved negative. The summary did not elaborate on the significance of that result or describe whether or to what extent previous handling of the bodies may have affected it. The summary concluded that a full investigation, complete with site inspection and witness interrogations should be conducted, and that their "medicolegal investigations [could not] give a conclusive answer to the question whether there was a battle or whether the victims died under some other circumstances."

None of the foregoing is to suggest that a massacre did or did not take place at Racak. However, the Clinton Administration has yet to make public the details of the massacre claim that it is adroitly spinning to justify American military involvement in Kosovo, in much the same way highly questionable atrocity accounts were used to justify intervention in Bosnia. [For details on the major incidents in Bosnia, notably sniping against civilians and the notorious "Serb mortar attacks," documented primarily reports from European media, see RPC's "Clinton- Approved Iranian Arms Transfers Help Turn Bosnia into Militant Islamic Base," 1/16/97.] As the initiation of NATO airstrikes in Kosovo approaches and the fighting on the ground intensifies, more reports of atrocities and massacres — of varying degrees of reliability and accuracy — can be expected. Suitably assisted by pro-Clinton media, proponents of NATO intervention can be expected to use reports of heavy-handed and indiscriminate attacks by Serbian forces on Albanian villages, with the attendant deaths and displacement of civilians, to buttress their case.

## **Uncertainties Surrounding the KLA**

At the same time the Clinton Administration and its supporters are making full use of accusations of misdeeds by Serb forces to further its pro-intervention policy, they will continue to

turn a blind eye to some unsavory evidence about the most likely beneficiaries of intervention: the Kosovo Liberation Army. This evidence includes:

- the KLA's ties to Islamic radical organizations, such as that of terrorist kingpin Osama bin-Ladin, who is known to have assets in the KLA's staging area in northern Albania (see "U.S. Alarmed as Mujahidin Join Kosovo Rebels," *The Times* (London), 11/26/99);
- the support the KLA derives from drug and organized crime elements in the Albanian diaspora in Western Europe (see *Jane's Intelligence Review*, "Another Balkan Bloodbath," 2/1/98);
- the KLA's victimization of civilians, both Serbian and Albanian; and
- the displacement of Serbian civilians from areas controlled by the KLA (see "In Kosovo's Furtive War, a Serb Just Disappears," *New York Times*, 3/4/99).

## The Smith Amendment and War Powers

The entire text of the Smith amendment, as introduced on March 19, is as follows:

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### JOINT RESOLUTION

Prohibiting the use of funds for military operations in the Federal Republic of Yugoslavia (Serbia and Montenegro) unless Congress enacts specific authorization in law for the conduct of those operations.

Whereas United States national security interests in Kosovo do not rise to a level that warrants military operations by the United States; and

Whereas Kosovo is a province in the Federal Republic of Yugoslavia, a sovereign state: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. RESTRICTION ON USE OF FUNDS FOR MILITARY OPERATIONS IN THE FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO).

(a) IN GENERAL— Except as provided in subsection (b), none of the funds available to the Department of Defense (including prior appropriations) may be used for the purpose of conducting military operations by the Armed Forces of the United States in the Federal Republic of Yugoslavia (Serbia and Montenegro) unless Congress first enacts a law containing specific authorization for the conduct of those operations.

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(b) EXCEPTIONS- Subsection (a) shall not apply to--

- (1) any intelligence or intelligence-related activity or surveillance or the provision of logistical support; or
  - (2) any measure necessary to defend the Armed Forces of the United States against an immediate threat.
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The Smith amendment may be seen as raising serious questions relating to the respective authorities of the President and the Congress over the initiation of military action, often referred to as "war powers" issues after the "War Powers Resolution" (P.L. 93-148), enacted over President Nixon's veto in 1973. However, the War Powers Resolution (the validity of which has not been recognized by any president of either party) was intended as an across-the-board, *a priori* effort to diminish the President's command of the armed forces. The Smith resolution, by contrast, is a limited effort to use the Congress's constitutional power of the purse to stop the president, on his sole authority, from attacking a country he said he intends to attack. To be effective, a funding cutoff pursuant to Congress's power of the purse would have to take place before forces are deployed; after the deployment takes place, Congress would be faced with a *fait accompli*.

In testimony before the House Committee on International Relations, Under Secretary of State for Political Affairs Thomas Pickering confirmed that the planned Air strikes against Serbia would constitute an "act of war"; such an admission may be seen as an Executive Branch usurpation of the power to declare war, which under the Constitution of the United States (Article I, Section 8) resides solely in the Congress. However, in the modern era, successive presidents have felt free to commit the forces without Congressional authorization (although usually with Congressional consultations).

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